UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 643 (PKC)

GARY HIRST,

Defendant.

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September 16, 2016
3:05 p.m.

Before:

HON. P. KEVIN CASTEL

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN R. BLAIS
AIMEE HECTOR
Assistant United States Attorneys

SHER TREMONTE LLP
Attorneys for Defendant
BY: MICHAEL TREMONTE
JUSTINE A. HARRIS
NOAM KORATI BIALE

ALSO PRESENT:
SPECIAL AGENT SHANNON BIENIEK, FBI
ELLIE SHEINWALD, Paralegal

(Jury not present)

THE COURT: This is United States of America against Gary Hirst.

Is the government ready?

MR. BLAIS: Yes. Good afternoon, your Honor. Brian Blais and Aimee Hector for the government. We are joined at counsel table by FBI Special Agent Shannon Bieniek and Ellie Sheinwald who is a paralegal in our office.

THE COURT: For the defendants.

MR. TREMONTE: Michael Tremonte, Justine Harris and Noam Biale for Mr. Hirst. And Mr. Hirst is at counsel table.

THE COURT: Is Shakeema Johnson present?

MS. JOHNSON: Yes.

THE COURT: Ms. Johnson, if you would please come up and you may sit in the jury box, if you will, please.

Ms. Johnson, I have summoned you to appear here as a result of what transpired in this case on Tuesday, September 13, this past Tuesday. And you will recall, and I will ask you whether this is correct, that on Monday you participated in the jury selection process in this case; is that correct?

MS. JOHNSON: Yes, sir.

THE COURT: At the conclusion of the process, you were selected to serve as a juror in this case; is that correct?

MS. JOHNSON: Yes, sir.

THE COURT: Keep your voice, please.

And you will recall that during the jury selection process I explained the length of the trial to the jurors, and those who had a hardship in serving for the length of the trial were invited to come forward.

Do you recall that?

MS. JOHNSON: Not specifically, no.

THE COURT: Were you here when jurors lined up at the outset of the case, after I explained the length of the trial, and that they lined up in a formation right in front of where you're seated now?

Do you recall that?

MS. JOHNSON: No, sir.

THE COURT: You do not recall being in my courtroom on Monday, with jurors lined up, the judge standing where I am standing now, which is called the sidebar, along with the defense counsel, you don't recall seeing that on Monday?

MS. JOHNSON: Well, from what I remember, specific questions were asked, and then those pertaining to that questions were asked to go to the sidebar.

THE COURT: You were given an opportunity, were you not, to state whether there was some hardship or difficulty in your serving on this case; is that not correct?

MS. JOHNSON: Yes. But --

THE COURT: Go ahead. You can answer. Yes but?

MS. JOHNSON: I didn't realize that -- I thought the selection of people were going up because they recognized someone in the case, or something to do with the case.

THE COURT: But you were asked whether service on this case would present a hardship to you, correct?

MS. JOHNSON: I really don't remember that or else I would have definitely stood up.

THE COURT: Because a moment ago I think you just indicated to me that you did remember that. Did I misunderstand you, just a moment ago?

MS. JOHNSON: From what I remember, the people that were called up were people that were saying that they knew one of the insurance companies or knew one of the people that were on the case.

THE COURT: I am asking you a different question, and I think you have answered it already. Do you recall that I asked the jurors to tell me if there was some reason why they could not serve in this case after I described the length of the trial?

MS. JOHNSON: I don't remember that or else I definitely would have stood up.

THE COURT: All right. There is a record of this proceeding that took place on Monday and it will reflect the exact words that I spoke. Do you have a difficulty with hearing? Do you have a hearing issue of some sort, perhaps?

MS. JOHNSON: No, sir.

THE COURT: OK. Did you have difficulty understanding any of my questions on Monday?

MS. JOHNSON: No, sir.

THE COURT: And you do recall that at the conclusion of the questioning of jurors, jurors were selected to serve in this case. You do recall that?

MS. JOHNSON: Yes, sir.

THE COURT: And you recall standing and being sworn in as a juror in this case?

MS. JOHNSON: Yes, sir.

THE COURT: And do you recall my instructing the jury to be ready for a 10:00 start and advising them that there may be difficulty in getting through the security lines, so they may wish to arrive early to avoid that?

Do you recall that?

MS. JOHNSON: Yes, sir.

THE COURT: So you knew that you had been ordered to appear at 10:00 on Tuesday, the 13th of October; is that correct?

MS. JOHNSON: Yes, sir.

September.

THE COURT: I'm sorry. September. Thank you very much.

But you did not appear, correct?

MS. JOHNSON: Correct.

THE COURT: And you did not call the court until after you were reached on your cell phone; is that correct?

MS. JOHNSON: Yes, sir.

THE COURT: All right. And that was about 10:40, 10:45, or so?

MS. JOHNSON: I received the call at 10:21, and I called back at 10:25.

THE COURT: Thank you very much.

Why didn't you appear on Monday at 10:00?

MS. JOHNSON: Because I went straight to work.

THE COURT: What time did you get to work?

MS. JOHNSON: At 6 in the morning.

THE COURT: What is the name and address of your place of employment?

MS. JOHNSON: 1269 Lexington Avenue, and the name is Petite Shell LLC.

THE COURT: That's in Manhattan, correct?

MS. JOHNSON: Yes.

THE COURT: Do you recall telling me on Tuesday morning that you worked in Brooklyn at the Petite Shell, that you didn't know the address of it, but it was more like somebody's home?

Do you recall telling me these things?

MS. JOHNSON: Yes. And throughout the week I spoke with one of the managers and found out that that's where the business address is, but our store location is 1269.

THE COURT: But I asked you where this store was that you opened, and you told me it was in Brooklyn.

MS. JOHNSON: On my pay stubs the address is in Brooklyn, but my store location is on Lexington Avenue.

THE COURT: I understand that.

MS. JOHNSON: So I wasn't sure which address to give you, and I apologize; I just wasn't sure.

THE COURT: No. But you told me that you were at the store in Brooklyn; isn't that correct?

MS. JOHNSON: I said the address was under -- the address of the store is under a Brooklyn address.

THE COURT: Did you tell me that you were in Manhattan?

MS. JOHNSON: I said I was at work.

THE COURT: The summary of the call is in the record.

Now, what did you think was going to happen with your not appearing?

MS. JOHNSON: I'm not exactly sure, sir.

THE COURT: Was there a reason that you did not call the court to indicate that you had no plan to appear?

MS. JOHNSON: I really don't have any excuse. I don't know. There isn't any reason.

THE COURT: Do you understand what happened on Tuesday morning here? You probably don't.

Tuesday morning, all of the people you see at the front table, and all of the people you see at the back table, and 13 other jurors were here in the courtroom. There were many spectators present. I estimated the total population in the courtroom was about 60. If I am wrong, that's just an estimate. Maybe it was 50, I don't know. We had our court reporter, courtroom deputy, law clerks, all present, wasting their time.

Did you give any thought to the consequences of your actions?

MS. JOHNSON: At the moment, no. But this entire week, yes.

THE COURT: I don't know whether you have ever known anyone who has been a party to a trial, or has been charged with a crime, or has been sued in a lawsuit. It's a stressful and important matter for all concerned. It's important to the government, and it's important to Mr. Hirst, who is the defendant on trial.

How would our system work if other people had your attitude to jury service?

MS. JOHNSON: It wouldn't.

THE COURT: If you had a loved one who was on trial, or you were on trial, would you want jurors who had the attitude that you had?

MS. JOHNSON: No, sir.

THE COURT: Is there something you would like to say to the people who are in the courtroom today?

MS. JOHNSON: Yes. I apologize for not being there on Tuesday, September 13. I really am sorry. I'm going through a lot of financial hardship myself. I'm currently in housing court, and I have to pay a certain amount every week in order to expunge my case, I guess -- I don't even know if that's the right word -- and I apologize.

THE COURT: I must say, Ms. Johnson, there are aspects to what you say that I can understand. I can understand a person who is fearful about losing a job. That's why I hear excuses. I understand in the jury room that you're invited to identify any issues that you may have. Perhaps I would not be happy, but I would understand if you had called to say, I'm not coming. That at least would have enabled us to go forward. But I don't see where you had any care or concern for other people, including your fellow jurors, people who travelled here from Rockland County and elsewhere to be here on time, had to get up very early to be here on time.

You told me a story on Tuesday about how you had to open the store, and if you didn't open the store, the store wouldn't get opened. Do you remember telling me that?

MS. JOHNSON: Yes, sir.

THE COURT: That doesn't explain why, after the store was opened at 6 a.m., you didn't come to court and you didn't call the court. It really doesn't.

I wish I had the confidence of knowing or believing that you have learned something as a result of this. I don't really feel that confident.

The jury clerk is present in the courtroom, and I am directing that you be issued a new subpoena to appear. And you will appear in this court for jury service. If you don't appear, it's known as contempt of court, and there is a basis on this record for this court to find you in contempt of court and to impose punishment, which could include fines and even imprisonment.

It really shakes faith in your fellow mankind. Your fellow jurors wouldn't have done that to you, but you did it to them, and you did it to the people in this courtroom. I really ask that as you go through life you think about this incident and think about how your actions affect other people, and not just how they affect you.

I will have to say that I heard reasons why your service on the jury would have been a hardship. Those are the reasons that I invited you to give me. But putting that aside, I really have heard nothing from you that explains why you didn't have the human kindness, the human courtesy, to get in touch with the court.

Do you recall Flo handing out information on how to get in touch with the court in the jury room?

MS. JOHNSON: Yes.

THE COURT: Were you planning to come in the next morning when you left here on Monday?

MS. JOHNSON: I was planning to come in, yes.

THE COURT: What happened in the interim?

MS. JOHNSON: Around 11:45 that same night, September 12th, one of my employees called me. She's currently in the hospital and she was the one that was supposed to open the store. She couldn't come, and she couldn't get in contact with anyone else. So being the supervisor, I have an obligation to open if any of my employees don't come.

THE COURT: I think now I am repeating myself, but that doesn't explain what happened between 6 and 10, or the absence of a call, or the inability to come after you opened the store.

Ms. Johnson, I really sincerely hope that you reflect on this experience and you realize the consequences of it to others.

Anything further from the government?

MR. BLAIS: No, your Honor.

THE COURT: From the defendant?

MR. TREMONTE: No, your Honor.

THE COURT: I thank you all for coming in. I apologize for having you come in for this proceeding and that's compounding this and the expense.

We are adjourned.

(Adjourned to September 19, 2016, 10:00 a.m.)